

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN PATRICK MOORE,

Plaintiff,

vs.

Civil Action 2:12-cv-609
Judge Marbley
Magistrate Judge King

BRENT CRUSE, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff, an inmate formerly incarcerated at the Chillicothe Correctional Institution ["CCI"], claims that his constitutional rights were violated by officials at CCI. Defendant Robinson, the warden of CCI, has filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Doc. No. 18. Defendant Robinson specifically argues, *inter alia*, that the *Complaint*, as it relates to the claims asserted against him, seeks to posit liability on a theory of *respondeat superior*. Because such a theory is an insufficient basis for liability under 42 U.S.C. § 1983, see *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691-95 (1978); *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984), defendant Robinson contends that the claims asserted against him must be dismissed.

In his response to defendant Robinson's motion, Doc. No. 27, plaintiff concedes that "Warden Robinson cannot be held liable as Respondeat Superior," *id.* [sic], and asks that this defendant be dismissed from the action.

It is **RECOMMENDED** that the motion to dismiss filed on behalf of

defendant Robinson, Doc. No. 18, be **GRANTED**.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

November 14, 2012

s/Norah McCann King

Norah McCann King
United States Magistrate Judge